



Signed and Filed: February 15, 2023

A handwritten signature in black ink, appearing to read "Hannah L. Blumenstiel", is written over a horizontal line.

HANNAH L. BLUMENSTIEL
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

| | | |
|---------------------------------|---|----------------------------|
| In re: |) | Case No. 20-30604 HLB |
| |) | |
| PROFESSIONAL FINANCIAL |) | Chapter 11 |
| INVESTORS, INC., |) | |
| |) | |
| Debtor. |) | |
| |) | |
| MICHAEL I. GOLDBERG, Trustee of |) | Adv. Proc. No. 22-3085 HLB |
| the PFI Trust, |) | |
| |) | |
| Plaintiff, |) | |
| v. |) | |
| |) | |
| US PERFORMING ARTS CAMPS, |) | |
| |) | |
| Defendant. |) | |
| |) | |

SCHEDULING ORDER

This proceeding came before the court on February 9, 2023 for a continued scheduling conference. Appearances were as noted on the record. After the February 9 scheduling conference, the court issued a Docket Text Order that required the parties to file no later than February 16, 2023 an amended discovery plan. The parties timely complied. Upon due consideration, the Court hereby **ORDERS** as follows.

1 **TRIAL.** The trial or hearing ("Trial") on the above
2 matter(s) will commence on the Date and Time of Trial, set
3 forth below. In the discretion of the presiding judge, trial
4 will be conducted either via Zoom or in person at the United
5 States Bankruptcy Court, 450 Golden Gate Avenue, Sixteenth
6 Floor, Courtroom 19, San Francisco, CA 94102. The Time
7 Reserved for Trial is also shown below.

8 **FACT DISCOVERY.** Fact discovery shall be completed by the
9 Fact Discovery Deadline shown below. Completion means that
10 depositions must be concluded, although not necessarily
11 transcribed. As to written discovery, responses and any
12 document production must be due before the Fact Discovery
13 Deadline. The court will attempt to resolve all discovery
14 disputes on an expedited basis consistent with paragraph D of
15 the court's Practices & Procedures.

16 The Fact Discovery Deadline may be extended by the parties
17 by agreement, without an order of the Court. Extensions of all
18 other deadlines set forth in this order require the court's
19 prior approval.

20 **PREPARATION FOR PRE-TRIAL CONFERENCE.** The court will
21 conduct a Pre-Trial Conference on the date set forth at the end
22 of this order. Prior to that Pre-Trial Conference, the parties
23 shall meet and confer by telephone or video (NOT by email) to
24 discuss the following:

25 **(a)** The means by which documentary evidence will be
26 presented. (See Pre-Trial Submissions Para. (c), below.)

27 **(b)** Whether the trial will be conducted via Zoom or in-
28 person. While the presiding judge will decide this question,

1 the parties should consider and discuss the following in
2 preparing for the Pre-Trial Conference:

3 **(i)** Counsel's access to technology:

4 **(aa)** Will each lawyer be able to participate in the trial
5 with a sufficiently large computer monitor or multiple screens?
6 A larger screen provides space to view the witness, manage
7 exhibits, and to view an outline or other materials.

8 **(bb)** Does each lawyer's computer have a built-in camera
9 and microphone? Will any lawyer need to use an external camera
10 and headset?

11 **(cc)** Will any lawyer require assistance from his or her
12 secretary or paralegal or someone else to manage exhibits
13 during trial? (The court will not provide such assistance.)

14 **(ii)** Witnesses' access to technology:

15 **(aa)** What type of computer, tablet, etc. are available to
16 each witness? Zoom works with PCs, laptops, tablets, and smart
17 phones, however, the smaller the screen, the more difficult it
18 might be to read and manage documents.

19 **(bb)** If a witness will use a computer, does it have a
20 built-in camera and microphone?

21 **(cc)** Does each witness have access to a second computer
22 that might allow them to view exhibits separate from the Zoom
23 (camera) screen?

24 **(dd)** Will the witness be able to testify from a quiet
25 room, without interruption and outside the presence of other
26 people?

27 **(ee)** Is the witness capable of locating, opening, and
28 navigating through documents?

1 **(iii)** Presentation of exhibits:

2 **(aa)** Counsel will prepare electronic exhibits that are
3 distributed to opposing counsel, all witnesses, and the court
4 prior to trial. Exhibits to be used solely for impeachment or
5 rebuttal will be emailed to the presiding judge's Courtroom
6 Deputy along with all other exhibits and thereby lodged with
7 the court in case needed during trial.

8 **(bb)** During examination, witnesses will view exhibits on a
9 device separate from that which films their face.

10 **(cc)** Counsel may also elect to use the Zoom "share screen"
11 function for some or all exhibits.

12 **(iv)** Preparation of electronic exhibits: See Pre-Trial
13 Submissions Para. (c), below.

14 **(c)** Other issues relevant to trial, such as witness
15 scheduling, the need for interpreters, or other issues of which
16 the court and opposing counsel should be made aware.

17 **PRE-TRIAL SUBMISSIONS.** No fewer than **14 calendar days**
18 before the Date and Time of Trial, each party shall:

19 **(a)** File and serve a trial brief, which must include a
20 summary of the facts to be proven and the legal theories on
21 which the party relies. Trial briefs shall not exceed **15 pages**
22 without prior permission of the Court.

23 **(b)** File and serve a witness list, including a brief
24 summary of the anticipated testimony from each witness. If a
25 party to the matter will be called as a witness (even as an
26 adverse witness) that party's name must be included on the
27 witness list. The presence of a witness' name on the witness
28 list alerts the court and other parties that the witness may be

1 called. It does not mean that witness will be called.
2 Accordingly, each party is responsible for ensuring the
3 attendance of every witness that party intends to call, whether
4 or not identified as a potential witness by another party.
5 Except in exceptional circumstances, and absent the consent of
6 other parties, a party will not be allowed to call a witness
7 not identified in that party's witness list. This subparagraph
8 shall not apply to expert witnesses or their testimony.

9 **(c)** In accordance with the relevant procedures for in-
10 person or Zoom trials (set forth below), submit to chambers¹ a
11 list of exhibits (other than those to be used for impeachment
12 or rebuttal) and exchange with the other parties copies of all
13 exhibits the party intends to introduce into evidence. Any
14 paper(s) in the court's record of which a party intends the
15 court to take judicial notice, or other facts that are proper
16 for judicial notice under Fed. R. Evid. 201, must be reproduced
17 and included as an exhibit(s). Copies of the declarations
18 filed and served in accordance with this order must be marked
19 as exhibits in the manner described herein. All exhibits are
20 to be pre-marked for identification. An exhibit shall not
21 include more than one document and its attachments. Each page
22 of any exhibit that has more than one page shall be numbered
23 consecutively.

24 For trials conducted in person, the parties must bring to
25 trial copies of all exhibits for opposing counsel, the
26 witnesses and the court, together with an exhibit list.

28 ¹ By email to Courtroom Deputy Dan Sondheim: dan_sondheim@canb.uscourts.gov.

1 Plaintiff's exhibits should be marked by number and Defendants'
2 exhibits should be marked by letter. If a party has more than
3 **10 exhibits**, the exhibits must be placed in a three-ring binder
4 with a tab for each exhibit and the exhibit list placed at the
5 front of the binder. An exhibit shall not include more than
6 one document and its attachments. Each page of any exhibit
7 that has more than one page shall be numbered consecutively.

8 For trials conducted in person, the parties may also
9 present documentary evidence electronically, in accordance with
10 the instructions below.

11 For trials conducted via Zoom, the parties must present
12 their evidence electronically, in accordance with the following
13 procedures:

14 **(a)** Each party's trial counsel shall provide an initial,
15 separate .pdf file containing a list of the party's trial
16 exhibits, identifying each exhibit by number or letter (as set
17 forth below) and providing a short description of each exhibit.
18 A separate .pdf file is required for each exhibit. An exhibit
19 shall not include more than one document and its attachments.
20 Each page of any exhibit that has more than one page shall be
21 numbered consecutively.

22 **(b)** Each exhibit shall be a separate .pdf file, named
23 sequentially. Plaintiff's exhibits shall be numbered as
24 follows: P_Ex_1, P_Ex_2, etc. Defendants' exhibits shall be
25 lettered as follows: D[identify specific Defendant]_Ex_A,
26 D[identify specific Defendant]_Ex_B, etc.

1 (c) Lengthy exhibits must be bookmarked so that counsel,
2 witnesses, and the court may access their relevant portions
3 with ease.

4 (d) Exhibits may be submitted by email, or on a thumb
5 drive or CD. Exhibits must be exchanged and provided to the
6 court by the deadline set forth in Paragraph (c) under Pre-
7 Trial Submissions, above.

8 **EXPERT DISCOVERY AND EVIDENCE.** The presentation of expert
9 testimony at Trial shall be governed by the following:

10 (a) Direct evidence must be presented by a declaration
11 that authenticates the report of the expert. See Fed. R. Civ.
12 P. 26(a)(2)(B), incorporated via Fed. R. Bankr. P. 7026. Each
13 party must file and serve declarations of experts and other
14 documentary evidence related thereto no later than **July 31,**
15 **2023.** A party that intends to offer an expert solely to
16 contradict or rebut evidence on the same subject matter
17 identified by another party must file and serve the disclosures
18 required by Fed. R. Civ. P. 26(a)(2) no later than **August 31,**
19 **2023.**

20 (b) To cross-examine an opposing party's expert
21 declarant, a party must notify the opposing party in writing or
22 by e-mail at least **3 court days** before the Date and Time of
23 Trial, in which case the declarant will be required to attend
24 the Trial. Any party who fails to notify the opposing party
25 will not be permitted to cross-examine the opposing party's
26 expert. Any party who requests the right to cross-examine an
27 expert and then does not do so will be expected to reimburse
28

1 the opposing party no less than the expenses incurred in
2 producing the expert at the Trial.

3 **(c)** The parties must conclude all expert discovery by the
4 Expert Discovery Deadline set forth below.

5 **PRE-TRIAL MEET AND CONFER.** Promptly after receipt of the
6 items mentioned in **PRE-TRIAL SUBMISSIONS** above, the parties
7 shall meet and confer (by video or by telephone - NOT by email)
8 to discuss the Pre-Trial Submissions and shall, no fewer than 5
9 days prior to trial, submit a Joint Pre-Trial Statement that
10 sets forth a concise and specific response to each of the
11 following items. To the extent the parties disagree as to a
12 response to any of the foregoing items, the Joint Pre-Trial
13 Statement should set forth each party's response clearly and
14 concisely.

15 **(a)** The following facts are admitted and require no proof

16 **(b)** The following issues of fact, and no others, remain
17 to be litigated

18 **(c)** The following issues of law, and no others, remain to
19 be litigated

20 **(d)** The appropriate measure of damages is

21 **(e)** The parties have exchanged lists of witnesses to be
22 called at trial

23 **(f)** The parties have exchanged all exhibits to be used at
24 trial

25 **(g)** The parties stipulate to the admissibility of the
26 following exhibits. (A stipulation pursuant to this provision
27 does relieve any party of its obligation to introduce its
28 exhibits and explain their probative value during trial.)

1 **(h)** The parties object to the admissibility of the
2 following exhibits (include an explanation of the general
3 nature of the objection to each disputed exhibit).

4 **MOTIONS IN LIMINE.** If efforts to resolve disputes
5 regarding the introduction of testimony or exhibits are
6 unsuccessful, motions in limine should be filed and served no
7 later than **7 court days** before the Date and Time of Trial.
8 Such motions should include a certification that the moving
9 party has complied in good faith with the meet and confer
10 requirements of the preceding paragraph. Opposition should be
11 filed and served no later than **3 court days** before the Date and
12 Time of Trial. Motions in limine will be addressed at the
13 commencement of Trial.

14 **ORDER OF PRESENTATION AT TRIAL.** Unless otherwise agreed
15 by the parties or ordered by the Court, Plaintiffs in adversary
16 proceedings will present their cases-in-chief first.

17 **IMPEACHMENT AND REBUTTAL WITNESSES.** The requirement of
18 advance identification of witnesses and production of exhibits
19 does not apply to witnesses and exhibits presented for purposes
20 of impeachment or rebuttal.²

21 **NOTICE TO COURT.** No later than the Monday of the week
22 prior to the Date and Time of Trial, counsel for: Plaintiff
23 (in an adversary proceeding); Moving Party (on a motion for
24

25 ² The proper function of rebuttal evidence is to contradict, impeach or defuse
26 the impact of the evidence offered by an adverse party. Testimony offered
27 only as additional support to an argument made in a case in chief is improper
28 on rebuttal. Peals v. Terre Haute Police Dept., 535 F.3d 621, 630 (7th Cir.
2008); see also Daly v. Far Eastern Shipping Co., 238 F.Supp.2d 1231, 1238
(W.D. Wash. 2003), aff'd 108 Fed. Appx. 476 (9th Cir. 2004).

relief from stay); and the Debtor or Trustee (on objections to claim or objection to plan confirmation) **must** telephone or e-mail the Court's Courtroom Deputy, Mr. Dan Sondheim (415-268-2312; dan_sondheim@canb.uscourts.gov), and report: whether the parties intend to go forward with the Trial as scheduled; if settlement is likely; and any other relevant information.

NON-COMPLIANCE. Any failure of a party to comply timely with this scheduling order may result in judgment against such party, removal of the Trial from calendar, exclusion of evidence or imposition of monetary or non-monetary sanctions. See Fed. R. Civ. P. 16(f)(1)(C), incorporated via Fed. R. Bankr. P. 7016.

DATE AND TIME OF TRIAL: Friday, December 22, 2023;
9:00 a.m.

TIME RESERVED FOR TRIAL: 1 day (3 hours of time on
the record to each party)³

FACT DISCOVERY DEADLINE: June 30, 2023

DISPOSITIVE MOTION DEADLINE: October 6, 2023⁴

EXPERT DISCLOSURES: July 31, 2023

REBUTTAL EXPERT DISCLOSURES: August 31, 2023

EXPERT DISCOVERY DEADLINE: September 30, 2023

³ The court times its trials, and will strictly enforce compliance with this allocation of time.

⁴ The court expects counsel to be familiar with the requirements of B.L.R. 7007-1. The Federal Rules of Bankruptcy Procedure do not require a separate statement of undisputed facts in support of a motion under Bankruptcy Rule 7056, which applies Rule 56 of the Federal Rules of Civil Procedure to adversary proceedings.

PRE-TRIAL CONFERENCE:

December 7, 2023; 2:00 p.m.⁵

OTHER PROVISIONS:

(1) Plaintiff and Defendant
have consented to entry of
final orders and judgment by
this court.⁶

****END OF ORDER****

⁵ Unless otherwise ordered, the December 7, 2023 pre-trial conference will convene via Zoom. The court encourages all interested parties to consult the court's website for information about court operations during the COVID-19 pandemic. The court's website also offers information explaining how to arrange an appearance at a video hearing. If you have questions about court operations or how to participate in a video hearing, you may contact the court by calling 888-821-7606 or by using the Live Chat feature on the court's website.

⁶ Dkt. 1 (Complaint), ¶¶ 10-11; Dkt. 7 (Answer), ¶ 10.

Court Service List